

BIA PRECEDENT COMMITTEERecommend legal issues for
BIA published decisions**Introduction**

As Immigration Judges, we sometimes find ourselves wishing that the Board of Immigration Appeals had issued a precedent decision on a particular issue arising in our cases. The BIA Precedent Committee was created to address that need; it serves as a conduit and clearinghouse for recommendations from Immigration Judges to the Board for published guidance. Since its creation in 2007, the BIA Precedent Committee process has resulted in a number of precedent decisions. Judges wishing to request that the Board publish a decision on a particular issue are asked to review the following guidelines and procedures, and to complete the fillable [*IJ Request for Board of Immigration Appeals Precedent Decision*](#) form located on the left side of this page. The BIA Precedent Committee will consider your request, may solicit additional input from other judges (including A Numbers of cases in which judges have addressed the issue), and if it concurs with the recommendation will forward the request to the Board.

Guiding Principles

1. Precedent requests should not recommend how the Board should adjudicate any specific case or rule on any given issue. Rather, a request should state the issue and articulate the need for guidance, providing as much circumstantial and legal context as possible short of seeking a particular outcome. If the Board decides to publish on an issue, it will select a particular case for publication, and it will decide how to rule on the issue based on the reasoning of the Immigration Judge's decision along with the briefs and other filings of the parties in that case.
2. An issue can be recommended to the Board for publication without reference to any specific case. An issue can be recommended to the Board for publication without reference to any specific case. However, whenever possible, requesting Judges should provide the A Numbers of any cases in which they, or other Judges, have ruled on the issue in question. The more A Numbers the Committee can provide the Board, the more chance there is that the Board will find a suitable vehicle for publication.
3. Judges generally base the need for a precedent on cases they have adjudicated; however, Judges may also draw on other sources, including the suggestions of Judicial Law Clerks. (Sometimes the JLCs will see an unresolved issue repeatedly because various Judges have assigned certain cases to them precisely because the law is not clear on that issue). Judges may draw upon the JLCs to assist in drafting a request for precedent decision and to identify A Numbers of cases in which the issue has been addressed.
4. This process does not detract from the availability of certification pursuant to 8 C.F.R. § 1003.1(c), and Judges should continue to use that mechanism as they see fit, either separately or in concert with the BIA Precedent Committee process. The BIA Precedent Committee was created to address the larger scale need for published guidance on unsettled areas of law and issues of general importance nationwide.

Precedent Request Process***Immigration Judge***

When an Immigration Judge identifies an issue on which it would be helpful to have guidance from the Board in the form of a precedent decision, the Judge should take the following steps:

1. Consult with his or her fellow Judges in the same court as to the desirability of a BIA precedent on the issue, and ask for

the A Numbers of any decisions in which other Judges have rendered a decision addressing that issue.

2. Once any comments are received from colleagues, the Judge should complete the fillable [IJ Request for Board of Immigration Appeals Precedent Decision](#) form located on the left side of this page. Judges may seek the assistance of a JLC in drafting the request, if that would help in preparing a timely and complete request. That form allows the requesting Judge to select their BIA Precedent Committee member from a list and to directly email the request to that committee member. The requesting Judge should also cc. their ACIJ when sending the request.

Judicial Law Clerks

When a JLC identifies a legal issue that could benefit from a BIA precedent decision, the JLC may raise the issue with the Judge and discuss why they believe a BIA precedent request should be made. The Judge has sole discretion whether to make a BIA precedent request or not. If the Judge agrees with the need for a BIA precedent request, the Judge should follow the process outlined on this page. JLCs may assist in preparing the request and identifying IJ decisions in which the issue has been dispositive.

Committee Member

When a BIA Precedent Committee member receives an IJ request, the member should take the following steps:

1. If necessary, correspond with the requesting Judge to clarify the issue and the need for precedent.
2. If necessary, canvass additional Judges to solicit comments on the need for such a precedent and to solicit any additional A Numbers of IJ decisions addressing the issue.
3. Verify that the ACIJ was cc'd on the requesting Judge's email.
4. Forward the request to all of the other committee members, along with any additional information, A Numbers, etc.

Committee

When a committee member forwards a request to the entire committee, the committee will take the following steps:

1. Confer, solicit additional information including canvassing additional Judges, if necessary, and decide whether to forward the request to the Board.
2. If necessary, redraft the request.
3. Forward the request to the ACIJ for Guidance and Publications.
4. If the ACIJ for Guidance and Publications indicates that there are no unintended consequences of the request, forward the request to the BIA manager designated to receive such requests.

Committee Chairperson

The role of the committee chairperson is to lead the BIA Precedent Committee through its deliberations and to guide the committee through the process of making a recommendation to the Board.

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